

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

October 7, 2015

Members Present:

Phil Barrow	Vice-President
Brian Alsip	Member
Rev. Richard Martin	Member

Members Absent:

Jim Martin	Secretary
Tim Holmes	President

Others Present:

Alex Getchell	Associate Planner
Lynn Gray	Legal Counsel
Julie Spate	Recording Secretary

Call to Order:

Phil Barrow called the meeting to order at 7:00 p.m.

Lynn Gray confirmed that there is a quorum. She further explained that in order for a developmental standard variance to be approved or denied, there must be a majority of the full complement of the board. With a five-member board, there is required three members to vote either for or against. Three choices are available to tonight's presenters. 1. Ask for a continuance to the next meeting. 2. Present, and if a unanimous decision is received, all is good. 3. Without a unanimous decision, the hearing would automatically be continued to the next meeting.

Approval of Minutes:

Brian Alsip made a motion to approve the September 2, 2015 minutes as submitted. Richard Martin seconded the motion. The members voted to approve the minutes.

Swearing In:

Ms. Gray swore in the audience en masse.

Old Business:

None.

New Business:

ZB 2015-13 (V) – 3088 N. Morton Street – Auto Sales Lot:

Alex Getchell introduced the case as a request by Steven B. Williams for 3088 N. Morton Street. The petition is for developmental standards variances from:

- (1.) Article 5, Chapter 4 Architectural Standards (Display Windows)
- (2.) Article 5, Chapter 4 Sidewalks & Pedestrian Walkways (Walkways along façades)
- (3.) Article 5, Chapter 4 Outdoor Merchandise Storage Areas (Vehicles For Sale)
- (4.) Article 7, Chapter 10, Part 3, Driving Surfaces (Painted Parking Spaces)
- (5.) Article 7, Chapter 12 Entrance Separation, From Street Intersection (138' instead of 150')/Petitioner may be withdrawing.
- (6.) Article 7, Chapter 12 Entrance Separation, From Other Entrance (88' instead of 100')/Petitioner may be withdrawing.
- (7.) Article 7, Chapter 12 Interior Drive Widths (18' width & 90 degree parking)
- (8.) Article 7, Chapter 12 Buffer & Screening Standards (Remove Buffer Yard Type 2)

These are in the MXC and Gateway-Overlay Zoning Districts. The variances are needed as:

- (1.) The Gateway Overlay District requires all commercial building façade walls shall have display windows, faux windows, or decorative windows for no less than 60% of the façade wall's horizontal length along all pedestrian walkways. The petitioner is requesting to not provide 60% windows on the west façade (Professional Drive). The north, east & west façade walls are each required to meet the 60% standard. The petitioners are proposing nearly 100% windows/glass on the north and east façades.
- (2.) The Gateway Overlay District requires pedestrian walkways be provided from the sidewalks to the main entrance of the structures on each lot and along the full length of any façade of a building that includes a customer entrance or abuts a parking area. The petitioner is requesting relief from this standard, to not provide pedestrian walkways along the full length of any of the façades, except for the north.
- (3.) The Gateway Overlay District requires all outdoor storage of merchandise, including vehicles, be immediately adjacent to the building, or be located behind an eight foot wall or a wall and decorative fence combination.
- (4.) The Zoning Ordinance requires each vehicle on display for sale to be located within a clearly painted parking space. The petitioners wish to display merchandise vehicles at different angles and want to be able to freely change the orientation of vehicles to attract customers
- (5. & 6.) Just prior to the meeting the petitioners indicated to staff that these would be withdrawn. They are necessary as entrance drives are required to be separated from street intersections by 150' and from other access points by 100'.
- (7.) The Zoning Ordinance requires a minimum of 22' interior drive width when there's 90-degree parking. Since the petitioners are requesting non-delineated parking for the merchandise vehicles and they wish to park the vehicles at all angles, this variance is sought.
- (8.) The Zoning Ordinance requires there is a buffer yard type two any time a property zoned MXC is developed adjacent to an RSN (Residential Suburban Neighborhood) or an IG (Industrial General) zoned property.

The application is complete, the public notification requirements have been met and the petition is ready for the board's consideration.

Ms. Gray asked to have exhibits 1-14, handed out by the petitioner, made part of Mr. Getchell's file.

Jeff Eggers, the petitioner representing Hisham Ibrahim Alkhatib, introduced all members of their team attending – seller David Dowden, architect Neil Dixon and Steve Williams who has worked with Mr. Dowden on the site plan and with the city on this project. Mr. Alkhatib wishes to construct an office, a showroom and a detail area for his use in the car sales business. He and his manager brother want to offer higher end used cars. Exhibits 1-4 show the proposed building from four elevations and interior layout. The cars would enter the building on the south side. The current business location is north of Matlock Ford and south of Simon Road. Dave Dowden has agreed to replot the commercial subdivision by replotting lots 3-5 into lots 3-4. Exhibits 5-7 show both how they are laid out now and how they would be laid out for this business. Exhibits 8-10 provide increasing aerials of the property. When Mr. Dowden started Northpoint, he laid it out with north to south roads. When the city approved the commercial subdivision, the resulting triangular lot due to the surrounding roads was part of that approval. There are nine car lots in this area. Mr. Egger's requested the Board accept the staff's recommendation for approval of variance requests one, three, four & eight for the east side.

The client and seller agree to use only one entrance off Professional Drive. Exhibit 11 shows the drive to remain being the south entrance with the elimination of the north entrance. This eliminates the need for variance requests five and six, so they are being withdrawn. Variances two, seven and eight for the west side remain.

Ms. Gray instructed the Board that they are not bound by the staff report, so additional requests can be asked or the staff report can be accepted as written without any additional information. She suggested the best approach would be for the petitioner to finish his presentation and if there are any specific requests after hearing any remonstrances, they can be offered then. Mr. Barrow asked if all were comfortable with that plan and the Board affirmed.

Mr. Eggers continued with variance request seven. Exhibit 11 shows a one-way, 18' wide drive around the building. This would allow for cars for sale to be displayed in various ways. Mr. Eggers read from a September 18th, 2015 e-mail from Mr. Getchell that concluded "to go along with your request to be allowed non-delineated parking spaces, is for perpendicular parking to be allowed in those non-delineated parking areas. From a realistic, practical, and enforcement standpoint, we realize the car dealership, if approved, will be placing cars in all different directions, and will not be limiting themselves to just 45 & 60 degrees. So, let's go ahead and be clear in the request for 18' drive aisles, that there would be perpendicular parking in those areas." Mr. Eggers confirmed asking the Board to approve variance seven in this regard. They maintained allowing perpendicular parking in the non-delineated parking areas would not be injurious to the public health, safety, morals and general welfare. It would not affect the use of the area adjacent to the property in any adverse manner. Based on the unique configuration of the lot, strict application of the terms of the ordinance would result in a practical difficulty in the use of the property if perpendicular parking in the non-delineated parking areas is not allowed. The request is not made for any economic gain.

As to variance two, the site plan as seen on Exhibit 11 has sidewalks along the entire east and north facades. Mr. Williams clarified that currently there is a sidewalk connecting to the outer walk circling the walk all across the north side. Mr. Eggers asked if you enter the parking lot from the east door. Mr. Williams confirmed the east door exits onto a short sidewalk that terminates at the parking lot. The south façade has garage doors for the vehicles, showrooms and detailing area. This will not be a service location but simply detailing for sale preparation. A sidewalk on the south would create a practical difficulty getting the cars into the building. No sidewalk on the south would not be injurious to the public health, safety, morals and general welfare nor in any way affect the value or use of the adjacent property owners. They maintained it does create a practical difficulty. No sidewalk on the west will not

be injurious or affect adjacent property values. The staff report on pages five and six states "The request to not provide pedestrian walkways along the full length of the building could be injurious to the public health and safety, with pedestrians forced to walk within a reduced width drive aisle; however, staff finds the absence of walkways along the building will not be injurious to public safety due to the design of the one-way traffic around the lot, the sporadic nature of traffic on automobile sales lots and the commonality of customers walking between vehicles and across drive aisles without the aid of sidewalks." Mr. Eggers further read from the staff report, "Staff finds approval of the variance requests for walkways along the facades will not affect the use and value of adjacent properties in any way." And lastly, "Staff is unsure if a practical difficulty exists in meeting the requirements for pedestrian walkways along facades." With the general welfare not being injured, no effect on adjacent property values and the practical difficulty addressed, the petitioner submitted variance request two for approval.

In going from lots 3-5 down to 3-4, the intensity of Professional Drive usage in the future has been lessened. Instead of the potential of five businesses, it is reduced to four at most. This commercial subdivision was platted and approved by the city before the gateway overlay was enacted. There is transition with the fence on the residential side of Professional Drive. Exhibits 12-14 depict from the fence on the residential side six feet of grass, 28' of road from top of curb on the west to top of curb on the east, then six feet of grass including a five-foot walkway followed by 10' of landscaping as required by the buffer yard type two. Mr. Eggers stated asking for a reduction from 85' to 50' of buffer. Mr. Eggers next addressed glare issues, stating they don't think this lot will produce any more glare issues for the neighbors than the car wash due to the afore described buffer. Exhibit 12 shows homes to all be one-story and no windows are seen. Directional lighting will be used on the lot for lot safety and visibility of cars for sale. This is not a 24/7 operation and no more random traffic than the car wash. No car carrier trucks will be used, but will just be brought in one or two at a time. Mr. Alkhatib confirmed. Mr. Eggers also highlighted the hours of operation. The petitioner is requesting a reduction of the buffer, believing it is not injurious to the public, safety, health or morals or the general welfare of the community, will not adversely affect adjacent property values and will create a practical difficulty for displaying the vehicles and for maintaining the necessary inventory and will not create a bigger buffer for concerns regarding glare, traffic and safety. For these reasons Mr. Eggers asked for approval of variance eight relating to the west side buffer area.

Ms. Gray sought clarification for the record, asking the petitioner if he is proposing a buffer but as presented on the plan as part of it. Mr. Getchell clarified with the petitioner on his buffer yard proposal, asking if he was proposing additional landscaping beyond the street trees and perimeter parking lot. Per Exhibit 11, Mr. Eggers explained that from the east side curb there would be six feet of grass including the five foot sidewalk and then 10' of grass area with trees along the west side. Mr. Getchell responded that those are already required by the ordinance. The buffer yard is in addition to those landscaping requirements. Mr. Eggers confirmed that they are asking for a variance then as they maintain a buffer is being created. Mr. Getchell explained that what Mr. Eggers is calling a buffer is already required by the subdivision control ordinance, as street trees and the also included plants in that landscaping area, which is the parking lot perimeter landscaping. Additionally, in the center by where the office and landscape island are, that is interior parking landscaping, which is also required by the zoning ordinance. The buffer yard is a requirement in addition to each one of those, so when the petitioner refers to providing a buffer, they are speaking to landscaping already required by ordinances. Mr. Eggers maintained they are asking this not be required as they feel their site plan shows enough buffer. Mr. Eggers also highlighted that the gateway is 31 and what is being asked for is on Professional Drive which is used sparingly at best. Mr. Barrow asked if the car wash entrance is off Professional Drive. Mr. Eggers confirmed and referenced exhibit five.

Mr. Barrow called for any remonstrators. There were none.

Mr. Getchell offered some observations to the petitioner's remarks. He highlighted that when a subdivision is approved by Plan Commission, they look only to see if it meets the zoning ordinance and nothing more. Ms. Gray did not think the petitioner was trying to be adversarial in making this statement. Mr. Getchell referenced the 18 foot width and perpendicular parking, and the e-mail Mr. Eggers previously read aloud. Mr. Getchell explained that in his email to Mr. Eggers, he was not recommending approval of the 18 foot width drive aisles, he was encouraging the petitioner to include perpendicular parking in their request for 18 foot wide drive aisles, in order to be clear to the Board that perpendicular parking could occur along a drive aisle less than 22 feet in width. Mr. Getchell stated the proposed site plan stated the display area parking was labeled as only 45 degree and 60 degree parking and that if the petitioners were committing to parking at those angles, staff would have a different recommendation for the requests for non-delineated parking spaces. Regarding the sidewalks around the building, the south side does not require a sidewalk as there is no customer entrance and staff was not considering the display area as parking lot because customers would not be parking there. Mr. Eggers added that the door on the west side is an emergency exit only. Mr. Getchell spoke to the intensity of the subdivision being lessened due to expansion on to the fourth lot, there is still concern regarding the intensity on this lot and whether that could be spread out farther south. With the buffer yard calculation, the petitioner made reference to an existing six foot fence along houses, but the zoning ordinance states that the developer of the property is required to put in the buffer yard type two and not the adjacent property. Mr. Getchell read from the zoning ordinance: "The required buffer yard shall be installed despite the presence of streets, alleys, streams and other features separating property lines and conflicting zones." Regarding the car carrier trucks and staff recommendation, it may not apply to this petitioner but it is a "live and learn" situation from staff on what happens when it is not included, as another business is now storing a car carrier truck on their property. The proposed condition is to prevent any issues with this going forward, if the business strategy or ownership changes.

Mr. Getchell further reviewed the reason for staff's recommendation for denial on requests two, seven and eight from the standpoint of whether a practical difficulty exists. This business could be expanded further south and sidewalks around the building could potentially be added, the interior drive widths could potentially be widened and the buffer yards could potentially be added. The exception is the buffer and screening standards on the west side, staff is still recommending denial of that request.

Mr. Eggers responded that the property has been expanded to the south already once by splitting lot four in half.

Mr. Barrow asked if each request should be considered separately. Ms. Gray reviewed that a three to zero vote is required one way or the other. If approving, there is evidence presented to accept the staff findings. Denial requires a specific reference as to the statutory criteria believed to not have been met and the supporting facts. Ms. Gray recommending voting on each one separately if there are going to be denials.

Action taken on ZB 2015-13 (V) – 3088 N. Morton Street – Auto Sales Lot:

Rev. Martin made a motion to approve variance requests one, three, four & eight (east side) as recommended by staff. Mr. Alsip seconded the motion. The motion passed.

There was discussion reviewing variance request two again. Mr. Eggers further explained that lots three through five have sat vacant for years. The seller is making lot five/four larger to facilitate a business that wants to do business in Franklin. The petitioner maintains that to make him go further south will

reduce the viability of the sale of lot three for which an offer has never been received, so they maintain there are practical difficulties.

Mr. Alsip made a motion to approve variance request two, Article Five, Chapter Four, Sidewalks and Pedestrian Walkways. A second was made by Mr. Barrow. The motion passed.

Mr. Barrow asked Mr. Getchell to review variance request seven again. Mr. Alkhatib presented that dealerships do not keep their cars in the same position. Most often his cars will be at 45 or 60 degree angles. The times of needing 90 degree parking angles will be very seldom and for very temporary time periods. Customers park wherever they want. Ms. Gray pointed out that the actual petitioner is Mr. Alkhatib with consent of the owner.

Mr. Alsip made a motion to approve variance request seven. Rev. Martin seconded. The motion passed.

Mr. Barrow called for another review from Mr. Getchell of variance request eight along the west side. Mr. Getchell explained their request is for complete removal of the buffer yard type two requirement along the west side. Discussion was held for the purposes of clarification. Mr. Alsip initiated a discussion to insure that the original motion to approve had included the five conditions set forth in the staff report. It was insured that it did and no amendment was needed.

Mr. Alsip made a motion to approve variance request eight for the buffer yard along the west side. A second was made by Rev. Martin. The motion passed.

ZB 2015-14 (V) – Casey’s General Store:

Mr. Getchell introduced the case being presented by the Farnsworth Group on behalf of Casey’s General Store at 3048 North Morton Street. The petition is for developmental standards variances from:

- (1.) Article 5, Chapter 4 Architectural Standards (Display Windows)
- (2.) Article 5, Chapter 4 Architectural Standards (Pilaster Projections)
- (3.) Article 5, Chapter 4 Sidewalks & Pedestrian Walkways (Walkways along façades) – This is for the landscaping required to be between the sidewalks and the building.
- (4.) Article 7, Chapter 3 Accessory Structure Location, Front Yard (Fuel Station Canopy)
- (5.) Article 7, Chapter 3 Accessory Structure Location, Front Yard (Dumpster Enclosure) The fuel station canopy would be in the front yard along 31 or North Morton Street and the dumpster would be in the front yard along Professional Drive.
- (6.) Article 7, Chapter 12 Entrance Separation, From Other Entrance (less than 100’)
- (7.) Article 7, Chapter 12 Buffer & Screening Standards (Remove Buffer Yard Type 2) – This is required on the west, south and east sides of the property.
- (8.) Article 8, Chapter 3 Non-Residential Permanent Signs (Signage on Accessory Structure)

These are in the MXC and Gateway-Overlay Zoning Districts. The variances are needed as:

- (1.) The GW-OL District requires Display / Faux / Decorative windows be provided for 60% length of facades along pedestrian walkways on the north, east, and south sides of the building.
- (2.) The GW-OL District requires at least three enhanced architectural entry features, out of a choice of five options, be incorporated into the design of each façade of the building. The petitioners are proposing to provide two of the entry features, and vary from a third option; they are requesting to be allowed 4 inch pilaster projections, instead of 8 inch.

- (3.) The GW-OL district requires walkways along the facades of buildings be separated from the building by a landscape area, including benches & seating areas, at least 5' wide for 50% of the length.
- (4. & 5.) Accessory structures (Fuel Canopy & Dumpster Enclosure) are not permitted to be located in a front yard. The subject lot has three front yards and both Canopy & Dumpster Enclosure are considered accessory structures.
- (6.) Entrance drives onto local streets requires a separation from other access points of at least 100 feet. The distance between proposed drive on Professional Drive & car wash entrance is less than 100 feet.
- (7.) The ZO requires a Buffer Yard Type 2 any time a property zoned MXC is developed adjacent to RSN: Residential, Suburban Neighborhood; RMH: Residential, Manufactured Home Park; and, IG: Industrial, General.
- (8.) The Sign standards only allow wall signage to be placed on primary structures and the petitioners are proposing a sign on the fuel station canopy, which is considered an accessory structure.

The application is complete and public notification requirements have been met. The petition is ready for the Board's consideration and action.

The petitioner introduced himself as Patrick Moone, engineering manager for Farnsworth Group. Two members from Casey's are also present, Johnee Dyar and Matthias Smith. Mr. Moone expressed support for the variance requests already recommended by staff for approval. Beginning with variance request seven for the buffer yard type two, Mr. Moone explained that without this variance they are not able to develop the site. Based on the site configuration, if they position to move out of one buffer yard, they are in the other one. Casey's safety protocol dictates the fuel canopy be in front, which is already recommended for approval by staff, so cashiers can maintain visual surveillance of the fueling area. Some of the landscaping along Professional Drive and Earlywood Drive would still be done, but the variance request is to be allowed to put some additional pavement in these areas. Ms. Gray asked for the exact extent of buffer zone variance. Mr. Moone explained that they were initially asking for an entire removal of the buffer requirement, but understanding the perspectives offered in the previous case, they changed their request and are okay with the requirements along Earlywood Drive and Professional Drive. Ms. Gray verified that if landscaping was provided along the southwest corner, the variance would only be needed for the yard. Mr. Getchell further clarified that the petitioner is now requesting to remove the 20' buffer yard and the associated landscaping across the east, along 31 and a portion of the south, and to remove the buffer yard setback along the west but still provide the landscaping required by the buffer yard in that area along the west and south. Ms. Gray asked if this changes staff's recommendation at all and Mr. Getchell responded that what the petitioner is proposing is what staff recommended in the staff report. This hasn't gone before Technical Review Committee (TRC) yet, so Mr. Getchell has not yet seen any plans with trees or drainage. Ms. Gray asked if the staff recommendation could be crafted approving the variance request with certain stipulations. Mr. Getchell responded affirmatively, pointing out that his staff report already reflected this. Rev. Martin asked if the TRC would decide anything that would cause the petitioner to have to return to the BZA. Mr. Getchell explained that it depended on whether they are able to get everything in. It is possible they would have to return, but that is the risk taken when coming to the BZA before TRC.

The petitioner continued with their variance request number one. Casey's has a standardized storefront on all their buildings for customer recognition and they want to keep their image with the same front and side building elevations.

With regards to variance request number two, they would like to maintain their normal construction standard practice on the build of all four corners and on the entry extend out portions as well.

Ms. Gray represented Mr. Getchell in asking the petitioner for what the practical difficulties are in compliance with variances one and two. Ms. Dyar explained that because of what is inside the building, they are not able to have a real window (i.e., coolers, restrooms along the outside, the back room, the kitchen, etc.). Mr. Getchell asked if the petitioners had a floor layout, explaining the uncertainty of practical difficulty because of the lack of information on what is inside the building and how it is laid out. The floor plan was explained by all three petitioners, referencing an exhibit. Mr. Getchell referenced calculating a 32% window coverage for Casey's along the east façade, with the ordinance requiring 60% on the north, east and south. Ms. Dyar further pointed out the angle of the lot and if it were squared up to match the buffer, traffic could not navigate around the fuel pump area according to Casey's safety standards. Landscaping and safety provided by sight lines are both being considered.

Mr. Alsip asked what was the purpose of faux windows. Mr. Getchell detailed it as an additional architectural design element to add character and interest to the side of a building. Ms. Gray and Mr. Getchell both referenced the Marsh store on IN-135, as an example of faux windows, with clear glass but on the other side is white painted drywall.

Ms. Gray further stated the commonness of faux windows in an overlay zone for architectural purposes only. She thinks there will be quite a bit of this in the gateway overlays coming in and out of town and the likelihood of people complaining about that.

Mr. Barrow asked which variance requests the board is in agreement with. Mr. Getchell cited that with tonight's presentation, the floor layout and the practical difficulties of adding any more windows to the east, north and south sides of the building, staff is in support of number one, the display windows. Staff is still recommending denial of pilaster projections. Number seven staff recommends approval to remove the buffer yard set back for the entire property but provide the landscaping equivalent of the buffer yard as stated in the staff report. "The landscaping equivalent of a Buffer Yard Type 2 shall be planted for 1.) the area west of the entrance drive onto Earlywood Drive, down to the west property line, and 2.) the full length of the property along Professional Drive, in addition to all other landscaping required by the zoning ordinance."

Staff also recommends approval of three, four, five, six and eight. The only other condition being that "All necessary permits/approvals shall be obtained, including but not limited to site development plan approval, building permits, sign permits, etc." The elevation with signage shown tonight has not been reviewed yet, so that is separate. Staff is recommending approval of all except number two, the pilaster projections.

At Mr. Barrow's request, Mr. Getchell and Mr. Moone reviewed variance request two particulars. Mr. Alsip offered the thought that discussion over a four-inch differential seems minor. Mr. Moone can't speak to the build side of the project. He is only involved in the design piece. This would be up to corporate to make any change. Mr. Getchell pointed out that this requirement is only for the two pilasters on the front wall where the entrance is located, not the whole building.

Action taken on ZB 2015-14 (V) – Casey's General Store:

Rev. Martin made a motion to approve variance requests one, three, four, five, six, seven, and eight subject to staff recommendations one and two. Mr. Barrow seconded. The motion carried.

Mr. Barrow made a motion to deny variance request two, due to no practical difficulty. A second was made by Mr. Alsip. Rev. Martin and Mr. Barrow voted in the affirmative. Mr. Alsip voted against. Ms. Gray pointed out that this means this one request only has to be considered at the next board meeting. Mr. Alsip suggested he could make a motion to approve and see how that vote would fare.

Mr. Alsip made a motion to approve variance request number two. Rev. Martin seconded. The motion passed.

Mr. Moone thanked everyone.

Other:

None.

Adjournment:

There being no further business, the meeting was adjourned at 8:45p by a motion from Mr. Alsip, a second by Mr. Barrow and a unanimous vote.

Respectfully submitted this 4th day of November, 2015.

Phil Barrow, Vice Chairman

Jim Martin, Secretary